IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 30338 of 2006(J)

ID.53/2002 of LABOUR COURT, KOLLAM

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PETITIONER:

D.NALAN,
MANAGING PARTNER, 'LAKSHMI MOTORS',
KIZHAKEMANGALASSERIL, SHAKTIKULANGARA, KOLLAM.

BY ADV. SRI.P.V.JAYACHANDRAN
SMT.KEERTHI SOLOMON

RESPONDENTS:

1. THE LABOUR COURT,
KOLLAM.

2. THE GENERAL SECRETARY,
QUILON DISTRICT MOTOR MECHANICAL WORKERS UNION
NO.262/69, CITU BHAVAN, KOLLAM-13.

3. BENNY CARDOSE,
PUTHENKULANGARA, NEENDAKARA, KOLLAM.

4. VINOD,
VADAKKETHOPPIL, NEAR KRISHNANADA TEMPLE,
CHAVARA P.O., KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR
G.P. M.R.SREELATHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 30338/06.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE AWARD DTD.28.10.05 OF THE LABOUR COURT.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.30338 of 2006

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Dated this the 9th day of October, 2007

J U D G M E N T

The petitioner is the management in I.D.No.53/2002 before the Labour Court, Kollam. The petitioner is challenging Ext.P1 award passed by the Labour Court in that I.D. The issue referred for adjudication was as follows:

> "Whether the denial of employment to Sri.A.Benny Cardoz, Conductor and Sri.B.Vinod, Cleaner of KL 7E, 7335, Lakshmi Motors (Bus Service), Sakthikunalgara, Kollam with effect from 22.1.2002 is justifiable? If not what relief is entitled to them"

2. The management took the contention that the workmen involved were not regular employees of the petitioner, but were only employees as substitute workers for a few days. The Labour Court, after considering the evidence adduced in the industrial dispute found that the workers were regular employees of the petitioner and that they were denied employment unjustly. On that finding, the petitioner was directed to reinstate the workers within two months with back wages from the date of denial of employment, ie., 22.1.2002. The said award is under challenge before me.

3. The petitioner only challenges the findings of fact. In the matter of interference with the findings of fact in the award in an industrial dispute, my jurisdiction is very limited, ie. to the extent of ascertaining whether the findings of fact are perverse. In this case, the union representing the workers caused to produce records of the Motor Transport Workers' Welfare Fund Board regarding the payment of contributions by the petitioner in respect of his employees for the relevant period, in which, the contributions were assessed in respect of the workmen involved in the industrial dispute also. That was a piece of evidence relied upon by the Labour Court as supporting the case of the union that the workmen were regular employees of the petitioner. Further, the Labour Court found that after admitting that there are documents in their possession to show the details of employees who worked in his establishment, he failed to produce the same before the Court. Therefore, an adverse inference was also drawn against the petitioner. The contention of the petitioner is that the assessment under the Motor Transport Workers' Welfare Fund Act is pending in appeal and therefore, the Labour Court was wrong in relying on the same for

deciding the case. In am unable to agree. Whether assessment is pending in appeal or not, it is a piece of evidence which the Labour Court is bound to consider in accordance with law. Further, the final determination orders relied upon were passed in 2002. The award was passed in 2005. The petitioner could have got the appeals disposed of in the meanwhile, in which direction the petitioner does not appear to have taken any steps. The award was published on 17.1.2006 and the petitioner filed this writ petition only on 16.11.2006. Even now, the petitioner is unable to inform this court of the decision in the appeals. Not only that, the Labour court has also relied upon the failure on the part of the petitioner to produce the documents admittedly in their possession to show the details of employees, which also would support the findings of the Labour Court. In the above circumstances, I do not find any perversity in the findings entered into by the Labour Court. Accordingly, the challenge against Ext.P1 award fails and the writ petition is dismissed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.